

In re ) Fair Hearing No. 15,448  
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Appeal of )

The petitioner, a nursing home resident, appeals a determination by the Department of Social Welfare denying his request to reduce the amount of his income that must be paid under Medicaid to cover his nursing home costs. The issue is whether the petitioner's wife, who lives in the community, is eligible for an increase in the minimum monthly maintenance allowance for the community spouse. The facts in this matter are not in dispute and were submitted in writing by the petitioner's wife and son. They are summarized as follows.

1. The petitioner has been a nursing home resident since 1987. Prior to his illness the petitioner and his wife had a comfortable income. Insurance paid most of the petitioner's nursing home bills for about ten years, although, as the costs of the petitioner's care rose, the couple had to pay increasing amounts out of pocket. Within the last year that insurance ended, and the petitioner was found eligible for Medicaid.

2. The petitioner has income from Social Security and a pension totalling \$2,361 a month. The petitioner's wife

is employed and has earnings of \$2,633 a month.

3. The couple's home, in which the petitioner's wife still lives, is exempt as a resource under Medicaid. However, the home needs extensive repairs and is at risk of losing value if those repairs are not made.

4. The petitioner's wife submitted credible documentation that her present monthly expenses are \$3,675.

The details of those expenses are set forth in a Hearing Exhibit, which is attached hereto and incorporated herein by reference. In addition to those monthly expenses are several items that the petitioner's wife would soon need to maintain her present life style. Those include financing repairs on the home, deferring present income for retirement, and purchasing a late model car. The petitioner's wife estimates those additional expenses at about \$1,330 a month.

5. The Department has determined that because the petitioner's wife's income is in excess of the maximum spousal allocation allowed under the regulations (see *infra*), she is not eligible for a spousal allocation from the petitioner's income that is applied to his nursing home expenses.

ORDER

The Department's decision is affirmed.

REASONS

Under the Medicaid regulations, the resources of both spouses must be lumped together regardless of which spouse actually owns them in order to determine eligibility of one spouse for long term care. Medicaid Manual (MM) § M410. However, if the spouse in the community is living in the couple's home, that home is exempt as a resource. Id. After eligibility is determined, the Medicaid scheme also allows the institutionalized spouse to pay over amounts of his or her income to the community spouse if it is needed to reach a certain monthly maintenance minimum. MM § M413.2. The present maximum spousal maintenance allocation set by Department policy (Procedures Manual § P2420D[8]) is \$2,019.

If the community spouse feels that her monthly income allocation is inadequate, the federal statute sets up a unique process which requires that the "fair hearing Board", and not the state agency itself, makes the initial finding as to whether the monthly spousal maintenance amount should be increased. 42 U.S.C. § 1396r-5(e); see Fair Hearing No. 12,673.

As noted above, the petitioner's wife's income is \$2,633 a month, which is well in excess of the \$2,019

maximum spousal allocation set by Department policy. In determining whether a community spouse qualifies for an increased monthly allocation amount the federal authorizing statute provides as follows:

(B) Revision of minimum monthly maintenance needs allowance.

If either such spouse establishes that the community spouse needs income, above the level otherwise provided by the minimum monthly maintenance needs allowance, due to exceptional circumstances resulting in significant financial duress, there shall be substituted, for the minimum monthly maintenance needs allowance in subsection (d)(2)(A) of this section, an amount adequate to provide such additional income as is necessary.

42 U.S.C. § 1396r-5(e)<sup>1</sup>

In this case, although the community spouse's expenses far exceed her income and the monthly allotment maximum, it cannot be concluded that they are unusual. She has the same kinds of expenses with which most persons are burdened and has budgeted in a good deal of discretionary spending on gifts, cable TV, and vacations. While no one would argue that her expenditures are frivolous or unreasonable, and are no doubt essential to her not-immodest lifestyle, it cannot be concluded that they are the result of any "exceptional circumstances" which might justify an increase in the monthly allotment.

The community spouse's main argument, that she is

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<sup>1</sup>See, also, MM § 413.21.

facing an imminent increase in her expenses that will be necessary to maintain the condition and value of her home, to obtain a new car, and to plan for her retirement, also cannot be considered exceptional circumstances under the regulations. The standard allotment set by the regulations takes into consideration customary and usual living expenses, although (as the Board pointed out in Fair Hearing No. 12,673) there is no doubt that the regulations contemplate a community spouse's expenses "be met in a very modest way or eliminated as not essential to survival".

While recent changes in federal law establish no limit to which the value of a couple's home is considered an exempt asset<sup>2</sup>, nothing in the law indicates an intent to allow community spouses to maintain or recover a particular lifestyle, or to keep the particular home in which they are living, regardless of the costs of its upkeep. Medicaid is a poverty program. To grant higher allotments to community spouses solely on the basis of their higher-than-usual lifestyle-maintenance needs would be perverse.

This is not in any way to suggest that the community spouse in this case has it easy. It is clear that since the onset of the petitioner's illness his wife has made many personal and financial sacrifices. Unfortunately, it appears that there may be more to come--especially regarding

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<sup>2</sup>Under the Medicaid regulations there is no penalty if the petitioner's wife were to sell her home and use the proceeds to purchase another one.

her continuing ability to remain in her home. However, it cannot be concluded that the present and impending financial problems cited by the petitioner's wife are of the type and severity contemplated by the above regulations. The term "exceptional circumstances resulting in significant financial duress" must be interpreted in the context of the extremely modest income and resource standards of the Medicaid program. For this reason, the Department's decision is affirmed.

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